

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS DIVISION

ELECTRONICALLY  
FILED  
6/17/2024  
U.S. DISTRICT COURT  
Northern District of WV

MOUNTAIN VALLEY PIPELINE, LLC,

CIVIL ACTION NO. 2:24-cv-12 Kleeh

Plaintiff,

v.

[Removal from the Circuit Court of the State  
of West Virginia, Webster County, Case No.  
CC-51-2024-C-12]

JEROME JAMES WAGNER,

Defendant.

Action Filed: April 30, 2024

**NOTICE OF REMOVAL**

**TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF MOUNTAIN  
VALLEY PIPELINE, LLC, AND ITS COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT**, reserving all rights, claims and defenses, Defendant Jerome James Wagner removes this action from the Circuit Court of the State of West Virginia, Webster County, Case No. CC-51-2024-C-12, to the United States District Court for the Northern District of West Virginia pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1367.

**I. Jurisdiction**

This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because the parties are citizens of different states and because the action seeks damages in excess of \$75,000.

- a. Diversity – Mr. Wagner is a citizen of North Carolina. For purposes of diversity jurisdiction, Mountain Valley Pipeline, LLC (“MVP”), as a limited liability company, is a citizen of all states in which its members are citizens, i.e., Pennsylvania, Florida, New York, Delaware, Virginia, Texas, and Ohio.
- b. Amount in controversy – Pursuant to 28 U.S.C. § 1446(c)(2)(A)(i) and (ii), Mr. Wagner asserts that the amount in controversy, exceeds \$75,000, exclusive of interest and costs. This does not appear to be in dispute.

In its Complaint (the only document in this matter thus far served upon Mr. Wagner, attached as **EXHIBIT A** to this Notice of Removal), MVP states that it “seeks punitive damages in compliance with W. Va. Code § 55-7-29, in excess of the jurisdictional amount in controversy.” Exhibit A, ¶ 50.

While the Complaint was filed in State court (where the jurisdictional amount for

Circuit Courts jurisdiction is \$7,500 (W. Va. Code §51-2-2(b)), it appears that MVP's reference to "the jurisdictional amount in controversy" refers to the "\$75,000 exclusive of interest and costs" amount set forth 28 U.S.C. § 1332(a).

In *Mountain Valley Pipeline, LLC, v. Tuhus*, Case 5:23-cv-00625, Southern District of West Virginia, Dkt. 1, ¶ 47, MVP used nearly identical language (but not the "exclusive of interest and costs" language in that federal diversity lawsuit), while noting that W. Va. Code § 55-7-29(c) provides that "[t]he amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or \$500,000, whichever is greater."<sup>1</sup>

## **II. Timeliness**

This Notice of Removal is timely filed within 30 days of purported service upon Mr. Wagner. See **EXHIBIT A**, p. 1 (indicating purported service upon the Secretary of State as Mr. Wagner's statutory attorney-in-fact on May 16, 2024).<sup>2</sup>

Respectfully submitted,

**JEROME JAMES WAGNER**

By Counsel

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<sup>1</sup> Wagner does not concede that he is properly subject to damages at all.

<sup>2</sup> Mr. Wagner does not concede that he has been properly served at all, let alone on May 16, 2024. Mr. Wagner expressly maintains his objection to insufficient service of process and does not intend to waive his right to raise this objection in a motion pursuant to Fed. R. Civ. P. 12(b) by the mere filing of this Notice. See *Clark v. Wells*, 203 U.S. 64, 27 S. Ct. 43, 51 L.Ed. 138 (1906).

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Removal was filed electronically with the Clerk of the Court, this 17<sup>th</sup> day of June, 2024, and thereby served on Counsel for the Plaintiff as follows:

Timothy M. Miller (WVSB #2564)  
Matthew S. Casto (WVSB #8174)  
Robert M. Stonestreet (WVSB # 9370)  
Jennifer J. Hicks (WVSB # 11423)  
Austin D. Rogers (WVSB #13919)

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/s/William V. DePaulo  
William V. DePaulo